

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- June 15, 1966

Appeal No. 8794 Jack & Harold Pollin, appellants

The Zoning Administrator of the District of Columbia, appellee

On motion duly made, seconded and unanimously carried, the following Order was entered by the Board at its meeting on August 11, 1966.

**ORDERED:**

That the appeal for permission to use approximately 990 square feet for professional office use on the 1st floor of an SP apartment building at 461 H Street, N.W., lot 49, Square 517, be denied.

From the record and the evidence adduced at the public hearing, the Board finds the following facts:

(1) The property involved in this Appeal is a newly constructed apartment house located in an SP District.

(2) In Appeal No. 8226 - 27 - 28, the Board of Zoning Adjustment granted permission to erect the subject building for apartments and SP office uses in the basement.

(3) Appellant states that there are 36 parking spaces in a garage and 34 spaces provided on the surface. The Building will contain 272 apartment units and must have 68 parking spaces for the apartment units. Two spaces will be allocated to the professional office use.

(4) Appellant wishes to rent space in the apartment house to an individual engaged in the practice of optometry.

(5) No opposition to the granting of this appeal was registered at the public hearing.

OPINION:

The sole question presented by this Appeal is whether an optometrist is a "similar professional person" to an architect, dentist, doctor, engineer or lawyer under the provisions of Section 4101.42 of the Zoning Regulations.

For the purposes of this Order we may accept the decision of the United States Court of Appeals for the District of Columbia Circuit, decided March 25, 1940, in *Silver v. Lansburgh & Bro.*, 111 F. 2d 518, in which the following appears:

"Appellants, in the main, base their claim for injunctive relief upon the broad ground that optometry is a learned profession . . ."

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"The (District) Court found that optometry is a mechanical art . . . but is not a learned profession comparable to law, medicine, and theology. . ."

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"We have considered the cases, and are of the opinion the best considered adopt the view that optometry is not 'one of the learned professions'."

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". . . we may very well concede that optometry is a profession, as that term is now colloquially used . . ."

This Board may therefore accept it as settled law in the District of Columbia that optometry is not a "learned profession" but is one of the many disciplines which have reached professional status, as distinguished from trade status.

We take notice of the facts that (1) the "Yellow Pages" telephone directory shows that in the District of Columbia almost all optometrists have their offices in commercial districts, (2) many of these optometrists' offices resemble stores, (3) many optometrists advertise extensively as indicated by the "Yellow Pages" telephone directory.

The question presented here must, we believe, be decided by reference to what the Zoning Regulations intend the Special Purpose Districts to be and not to be. In the first place, they were not intended to compete with the commercial districts, nor to draw occupancy from those districts. In the second place, they were to lie between commercial and residential districts and to provide a stabilizing influence on both. They were not designed to permit "store front" uses which are typical of many optometric establishments in the District of Columbia.

While we could issue an order granting this Appeal and requiring that the optometric establishment for which the Appeal was filed use no exterior signs, have no "store front", and have no advertising visible from the exterior of the building, we believe that such an Order would not be susceptible of practical enforcement and would lead to pressure to establish in the Special Purpose Districts optometric establishments similar in appearance to those now found in the commercial districts. In addition, the fact that many optometrists advertise widely for business leads us to the conclusion, at least for purposes set forth in Section 8207.2 of the Zoning Regulations, that introduction of optometric establishments in the Special Purpose Districts would not be similar to typical offices of lawyers, dentists and architects.

The Appeal is therefore denied.